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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,169	03/29/2006	Christian Scheering	2003P07837WOU'S	4121
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/574,169

**Applicant(s)**

SCHEERING, CHRISTIAN

**Examiner**

JOE CHACKO

**Art Unit**

2456

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

This office action is in response to the arguments filed on 8/8/2008. Claims 1-8 were cancelled. Claims 9-16, and 18 are pending. Claim 17 has been cancelled.

### ***Response to Arguments***

1. Applicant's arguments filed 8/8/2008 have been fully considered but they are not persuasive. Applicant argues that Shrivastava et al. fails to disclose the limitation "the detecting system broadcasts a message to the cluster causing other members to verify their view of the current cluster membership and that the message is not about the availability of the node manager". The examiner disagrees with the argument due to the fact that the Shrivastava et al. reference does disclose a method wherein a system detects a communication failure and broadcasts a message to the other systems in the cluster which clearly indicates the other clients within the cluster regarding the failure and availability status of that particular client that has failed. Therefore, contrary to Applicant's argument, Shrivastava's broadcasted message actually is sent to the other systems and therefore reads on Applicant's claim.

2. Applicant's argues that Shrivastava et al. discloses "that the detecting system broadcasts a message to the cluster causing other members to verify their view of the current cluster membership and the communication occurs within the server cluster and does not between the clients or between the client and server. The examiner disagrees with the argument due to the fact that the Shrivastava et al. reference does disclose node within the cluster which reads on Applicant's claimed clients. Shrivastava et al. discloses a method wherein one client broadcasts a message "to the cluster" which clearly includes the other clients within the cluster. Therefore, contrary to Applicant's argument, Shrivastava's broadcasted message actually is sent to the other systems and therefore reads on Applicant's claim.

3. Applicant's arguments with respect to claims 9,16, and 18 do not overcome the rejection of the claims under the Jung reference in view of Shrivastava et al. reference as further detailed below

Based on the foregoing, Applicant's arguments are not persuasive. Therefore, the rejections set forth in the previous action are maintained.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 9-11 and 13-18** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Pub. No. 2002/0129150 AI to Jung in view of U.S. Patent No. 6,163,855 to Shrivastava et al.

As to **claim 9**, Jung discloses a method for verifying an availability of a server (fig.15,346, transmitting service availability of a server), comprising: transmitting an availability requests by a client (fig.15, 10, MN) to the VPN server(fig.15, 50, VPN server) ([0071]; where the MN sends requests the VPN service from the VPN server through the home agent); transmitting a response to the availability request by the VPN server to the client by confirmation message if the server is available (fig.15, step 348);and

Jung does not disclose transmitting a message regarding an availability of the server by the client to other clients to prevent a transmission of the availability request to the server for a predefinable period of time.

In an analogous art, Shrivastava et al. does discloses a method wherein transmitting a message (column 5, lines 29-30; wherein one systems detects a communication failure with one of the systems and broadcasts a message to the cluster) regarding an availability of the server (fig.2, 60, system) by the client (by another system) to a plurality of predefinable other clients to prevent a transmission of the availability requests to the server for a predefinable period of time. (column 5, lines 25-37; wherein a regroup event is initiated and during which writes to potentially shared devices are disabled until the membership has stabilized)

At the time of the invention, it would have been obvious to a person of ordinary skilled in the art to modify the method disclosed by Jung with the method disclosed by Shristastava et al. to disclose a method of transmitting messages to another peer entities in the network. The motivation behind this modification is to ensure consistency of nodes in the cluster. (Shrivastava et al., column 2, lines 24-26)

As to **claim 10**, Jung-Shrivastava et al. discloses the method as claimed in 9, wherein the method is used for verifying the availability of the server in a packet-oriented communication network (fig.12; wherein the figure explicitly describes the process the detecting whether a service provided by a VPN server is available)

As to **claim 11**, Jung-Shrivastava et al. discloses a method wherein data is transmitted between the server (fig.12, VPN server) and clients (fig.12, MN) by a connectionless switch control ([0067]; wherein the data transmitted takes place through a VPN network including routers)

As to **claim 13**, Jung does not explicitly disclose the method wherein the client informs only the plurality of predefinable other clients in the same subnetwork.

Shristastava does discloses a method wherein the client (fig.2, 60, system) informs only the other clients (fig. 2, 60, other systems) within a same subnetwork (fig.2, 58, cluster) regarding the availability of the server. (column 5, lines 26-37; wherein the system detecting the communication failure of another system in the cluster sends out a

message to the other members of the cluster regarding the failure)

As to **claim 14**, Jung discloses the method as claimed in claim 9, wherein the client (home agent) executes the availability requests at a time which is predefined by a timer . ([0072]; wherein the timer sets a time period for which the MN is located in the FA)

As to **claim 15**, Jung discloses the method, wherein the timer is set every time to a predefinable value when the message regarding the availability of the server is received at the HA. ([0073]; wherein the timer is set a predetermined time and failure to receive a reply signal within the time period )

As to **claim 16**, this is a computer program corresponding to method in claim 1. Therefore it has been analyzed and rejected based upon method in claim 1.

As to **claim 18**, this is a system corresponding to method in claim 1. Therefore it has been analyzed and rejected based upon method in claim 1.

6. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Jung (U.S. Patent Pub. No. 2002/0129150 AI ) in view of Shrivastava et al (U.S. Patent No. 6,163,855) further in view of Chen et al.(U.S. Patent Pub. No. 2002/016964 AI )

As to **claim 12**, Jung and Shrivastava as modified does not explicitly disclose the transmitting of a multicast message to the other clients in the network  
In an analogous art, Chen explicitly discloses the method wherein message regarding the availability of the server is transmitted to the plurality of predefinable other clients using a multicast message.essage to inform other clients in the cluster about server availability information. ( [0046] , [0056]; wherein when a node fails the cluster node sends information about the failure to other nodes using a multicast message).

At the time of the invention, it would have been obvious to a person of ordinary skilled in the art to modify the method disclosed by Jung as modified with the method

disclosed by Chen et al. to disclose a method of transmitting messages to another peer entities in the network using multicast messages. The motivation behind this modification is to provide high availability and reliability among the nodes. (Chen, page 4, [0056])

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOE CHACKO whose telephone number is (571)270-3318. The examiner can normally be reached on Monday-Friday 7:30am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. C./  
Examiner, Art Unit 2456

/Dohm Chankong/  
Examiner, Art Unit 2452